

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ANTHONY CASAPINI,

Petitioner,

v.

3:05-CV-696

UNITED STATES OF AMERICA,

Respondent.  
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THOMAS J. McAVOY  
Senior United States District Judge

**DECISION and ORDER**

**I. INTRODUCTION**

Petitioner moves pursuant to 28 U.S.C. § 2255 to vacate or set aside his conviction and/or sentence on the grounds that: (1) his sentence violates the Supreme Court's holding in Blakely v. Washington, 124 S. Ct. 2531 (2004); and (2) his convictions on both Counts One and Two of the Indictment violate the Double Jeopardy Clause.

Petitioner pleaded guilty in 1991. He was sentenced in 1992. His conviction was affirmed upon appeal in 1992. Petitioner filed a motion pursuant to 28 U.S.C. § 2255 in 1997. That motion was denied. He now brings this subsequent motion.

Petitioner's motion must be denied because there is no indication in the record that Petitioner has obtained certification from the Second Circuit to file a second motion pursuant to § 2255. See 28 U.S.C. § 2255. In any event, the Supreme Court's decisions in United States v. Booker, 125 S. Ct. 738 (2005) and Blakely v. Washington, 124 S. Ct. 2531 (2004) do not apply retroactively to cases on collateral review and, thus, do not provide a basis for

relief. Green v. United States, 397 F.3d 101, 103 (2d Cir. 2005). Further, Petitioner's double jeopardy argument was rejected in Michaels v. U.S., 917 F.2d 566 (9<sup>th</sup> Cir. 1990) (unpublished).

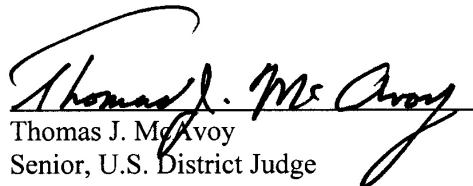
There being no substantial showing of a constitutional right, the Court finds that a certificate of appealability is not warranted.

## **II. CONCLUSION**

For the foregoing reasons, the Petition pursuant to 28 U.S.C. § 2255 and the request for a certificate of appealability are DENIED.

IT IS SO ORDERED.

Dated: August 10, 2005

  
Thomas J. McAvoy  
Senior, U.S. District Judge